

**R.D. # 09-10
Morristown, New Jersey**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**SOUTH STREET THEATRE COMPANY,
d/b/a THE COMMUNITY THEATRE¹**

Employer

and

CASE 22-RC-13182

**LOCAL 632, INTERNATIONAL ALLIANCE
OF THEATRICAL STAGE EMPLOYEES,
MOTION PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES AND CANADA, AFL-CIO, CLC²**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The Petitioner seeks to represent a unit of full-time and regular part-time theatrical stage employees³ employed by the Employer at its Morristown, New Jersey theater. The Employer is the sole employer of five full-time house stagehands. The

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ Theatrical stage employees are referred to on the record as stagehands or grips.

Employer obtains additional stagehands by referral from the Petitioner's non-exclusive hiring hall.⁴ The Petitioner seeks to include in the unit the five house stagehands and approximately eleven IATSE stagehands who have allegedly been referred to the Employer on a regular basis.

The Employer contends that IATSE stagehands are either independent contractors or, in the alternative, jointly employed by the Employer and a company named 642 Services, Inc. ("642 Services"), an alleged alter-ego of the Petitioner.⁵ In the event of the latter finding, the Employer asserts that a multi-employer bargaining unit which combines its own house stagehands and jointly employed IATSE stagehands is not permissible without the consent of both employers. Finally, the Employer contends that a unit of house stagehands and IATSE stagehands is not appropriate because they do not share a community of interest.

For the reasons set forth below, I find that the petitioned-for unit is appropriate and shall direct an election therein.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,⁶ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

⁴ Individuals that are sent to the Employer from the Petitioner's hiring hall are referred to herein as "IATSE stagehands."

⁵ As explained below, 642 Services is an entity which provides payroll services for employers who employ members of the Petitioner. The current name of 642 Services was changed from "642 Productions" about two years ago.

⁶ Briefs filed by the parties involved have been duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁷

3. The labor organizations involved claim to represent certain employees of the Employer.⁸

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described below:

All full-time and regular part-time theatrical stage employees employed by the Employer at its Morristown, New Jersey Theatre, excluding service employees, office clerical employees, guards and supervisors as defined in the Act.

II. FACTS

The Employer operates a 1300-seat performing arts center in Morristown, New Jersey, where it hosts various artists and community events. The Employer is a not-for-profit corporation which has been operating for 16 years. Allison Larena is the Executive Director and Jonathan Pierce is the Production Manager.⁹ The Employer directly employs a production staff of five full-time house stagehands, who

⁷ The Employer's South Street Theatre Company, d/a/a The Community Theatre is engaged in operating a performing arts center that presents artists and hosts community events at its Morristown, New Jersey facility, the only facility involved herein. During the preceding 12 months, the Employer has derived gross revenue in excess of \$1 million and during the same period of time, has engaged in interstate commerce of more than de minimus value.

⁸ The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁹ The Petitioner does not seek to include Larena or Pierce in the bargaining unit.

include Lighting Designer Sharif Mekawy, Audio Engineer Phil Clifford, and Production Assistants Jared Forsythe, Luke Kostuchik and Mark Critelli.

Pierce oversees the production of events at the theater. He works with the artist or the artist's tour manager to determine their requirements with regard to labor, catering, transportation, technical needs and the like. The tour manager provides Pierce with a stage plot reflecting the location of items/actions on stage, a lighting plot, a sound input list and other requirements. Both Pierce and the tour manager direct stagehands in the performance of their work. Pierce estimated that most of the direction (about 90%) of IATSE stagehands comes from the tour manager.

Pierce testified that house stagehands are generally involved in more technical work than IATSE stagehands. Mekawy is primarily responsible for the arrangement, operation and maintenance of lighting while Clifford is primarily responsible for the arrangement, operation and maintenance of sound equipment.¹⁰ This includes such functions as the programming of lighting and sound boards. IATSE stagehands assist Mekawy and Clifford by performing such tasks as the operation of spotlights, running cables, plugging in the microphones and similar tasks. IATSE stagehands often require a degree of specialized skill and knowledge to perform this work, and Castania has been asked to fill in for Mekawy on a few occasions. However, for the most part, IATSE stagehands appear to perform less technical work than Mekawy and Clifford. IATSE stagehands also perform more labor or physical work than Mekawy and Clifford. The production assistants perform whatever work is necessary at the

¹⁰ Mekawy and Clifford generally perform these functions pursuant to instructions from the artist. However, if the artist does not have the artist's own lighting designer or audio engineer, Mekawy and Clifford may participate in the design of lights and audio for the show.

direction of Pierce, Mekawy and Clifford. The record does not indicate that the production assistants perform more technical functions than the IATSE stagehands.

Mekawy and Forsythe are salaried employees while Clifford, Kostuchik and Critelli are paid on an hourly basis.¹¹ The house stagehands normally work a 40-hour week and are paid by the Employer through Paychex. The Employer provides house stagehands with benefits that include health insurance, premium pay for overtime, flexible spending accounts, a 403(b) plan and paid vacation. The two salaried employees also receive paid sick leave. The Employer pays unemployment and workers' compensation insurance for the house stagehands.

When a production requires more labor than the house production staff, the Employer obtains stagehands through the Petitioner's hiring hall. Pierce will email a request form to the hiring hall containing the number of stagehands that are needed, their skills (e.g. rigging or wardrobe), clothing requirements and the date/time to report. The hiring hall is then responsible for selecting the particular stagehands for referral. IATSE stagehands are not required to accept such referrals.

The Employer has requested that the Petitioner attempt to refer the same people on a regular basis and the Petitioner has attempted to accommodate the Employer in this regard. Thus, the Petitioner will attempt to refer the same core group of IATSE stagehands and then additional employees as necessary. However, the Employer does not have work for core IATSE stagehands on a daily basis and

¹¹ Mekawy earns \$40,000 annually and Forsythe earns \$23,000. Clifford and Critelli earn \$15 per hour (\$31,200 annually assuming a 40-hour work week over 52 weeks) while Kostuchik earns \$13 per hour (\$27,040 annually assuming a 40-hour work week over 52 weeks).

those stagehands may be busy working elsewhere (or otherwise unavailable). When a core stagehand is unavailable, the hiring hall will simply dispatch someone else.

The work of house and IATSE stagehands is coordinated by Pierce and the tour manager in the production of a single show or event. House and IATSE stagehands work together on certain jobs that require multiple people, and IATSE stagehands take direction from the lighting designer and audio engineer. For example, Mekawy and Clifford may direct IATSE stagehands to bring them particular equipment or speakers.

Pierce generally attempts to give breaks to house stagehands and IATSE stagehands at the same time. At the end of the day, IATSE stagehands leave together when their work is done. House stagehands sometimes continue working after the IATSE stagehands have been released.

The Petitioner and the Employer are parties to a “Memorandum of Agreement” (“MOA”) which pertain to IATSE stagehands. The MOA indicates that it was effective from January 28, 2008 to July 1, 2008, but the Employer continues to apply its terms.¹² Neither party contends that the MOA is a collective bargaining agreement. However, the MOA contains provisions regarding the rates of pay, benefit fund contributions, minimum hours and breaks to be received by IATSE

¹² The record also contains a predecessor memorandum of agreement that was signed by the parties on February 21, 2006. The MOA and the predecessor agreement are collectively referred to herein as the MOAs.

stagehands.¹³ The MOA also contains the following provision regarding 642 Services:

Should the Theatre choose to utilize the payroll administration services offered by [642 Services], the Theatre shall remit an additional 22% of gross wages for the purposes of covering the statutory benefits, payroll taxes and administrative costs. Such payment shall be due no later than 10 days from the date in which services were rendered.

Pursuant to this provision, the Employer has chosen to utilize 642 Services for payroll administration. Thus, 642 Services is responsible for issuing paychecks to IATSE stagehands with appropriate deductions for benefit funds and taxes. The additional 22% of gross wages is also used to cover workers' compensation and unemployment insurance. The Petitioner and 642 Services share a common facility and jointly employ an office administrator. John Crawford is the President of 642 Services, but he is not an officer of the Petitioner. The evidence does not indicate that the Petitioner and 642 Services share common officers.

Attached to the MOA is an IATSE Annuity Fund Participation Agreement with certain language struck out, including most references to a collective bargaining agreement between the parties.

The MOAs were negotiated by Larena and Pierce for the Employer and President Kevin M. O'Brien for the Petitioner. During negotiations, O'Brien identified himself as a representative of the Petitioner and not as a representative of 642 Services. The MOAs were not signed by a representative of 642 Services and negotiations for those agreements were not attended by a representative of 642

¹³ IATSE stagehands are paid per day (regardless of hours) or per work-call. Work-calls refer to particular tasks that are incidental to the show. Stewards receive \$208 per day and \$104 per work call. Other IATSE stagehands or "grips" receive \$182 per day and \$78 per work call.

Services. Likewise, 642 Services does not have any managers, supervisors or employees at the theater and does not participate in the daily operation.

IATSE stagehands are referred to the Employer with a shop steward. That steward is either O'Brien or Michael Castania. The Employer does not contend that the stewards are statutory supervisors, but they do perform certain responsibilities in the nature of a lead or foreman. Thus, the steward keeps a sign-in sheet of IATSE stagehands as they arrive at the job. The steward normally receives the stage plot and other instructions from Pierce and the tour manager regarding the needs of the show. The steward communicates and distributes that work to the other IATSE stagehands based on his knowledge of their respective skills and experience. The steward may also assign particular stagehands to work directly for and take direction from someone else (such as the house lighting designer or audio engineer).

The steward is responsible for preparing an invoice which consists of an "Employer Payroll" (with the gross amount owed for IATSE labor) and a "Stagehand Payroll Report" (with the gross pay of individual IATSE stagehands).¹⁴ He normally presents this invoice to Pierce along with the employee sign-in sheet when they have some down-time in their production duties. The Employer Payroll, Stagehand Payroll Report and sign-in sheet are all identified as documents of 642 Services. The Employer Payroll also describes 642 Services as "a payroll subsidiary of IATSE Local 632." Pierce checks the dollar figure on the invoice against his own calculation

¹⁴ Apparently, the "Employer Payroll" was once called the "Client Payroll." The date of this change in the title of the form is unknown.

and will sometimes check the sign-in sheet to ensure that the correct number of IATSE stagehands actually worked.

Artists may rent the theater for their own production or are presented in a production of the Employer. When the theater is rented, the Employer receives a flat rental fee and the artist keeps the receipts. The artist is then responsible for the costs, including the payment of any IATSE labor. For example, the New Jersey Ballet has rented the theater and employs IATSE stagehands pursuant to its own collective bargaining agreement with the Petitioner. When the theater is not rented, the Employer keeps the receipts and pays IATSE stagehands pursuant to the MOA.

Day-long events are divided into three phases for purposes of IATSE stagehand referrals: the load-in, the show call and the load-out. The load-in/out essentially involve the unloading of trucks, preparations and placement of equipment for the show, deconstruction of equipment after the show, and the loading of equipment back onto trucks. That is, the work performed before and after the show. The work performed by IATSE stagehands during the show is the “show call.” The show call generally requires fewer stagehands than the load-in/out. Therefore, IATSE stagehands who do not work the show call are released (and called back for the load-out, as necessary). Pierce and the steward will discuss the number of employees who need to be retained for the show call, and Pierce ultimately determines that number. The steward then selects the specific IATSE stagehands who will stay and work the show call based on his knowledge of their respective skills and experience.

The Petitioner presented evidence that Pierce considers himself to be the manager of IATSE stagehands with authority to determine their continued

employment with the Employer, how their work should be performed, and how they must otherwise conduct themselves. The record contains three letters from Pierce to the Petitioner requesting that five IATSE stagehands no longer be referred to the theater. Pierce based this demand upon the lateness, unsatisfactory performance, intoxication, early departure and insubordination of the stagehands in question. With regard to the conduct of three such stagehands, Pierce concluded as follows:

As their Supervisor, I feel that the above actions of the stagehands, who are in fact Employees at Will, constitute Gross Insubordination, and therefore request their termination from The Community Theatre.

The Petitioner has honored these requests. On one occasion, the Petitioner mistakenly referred an IATSE stagehand to the Employer after he had been terminated, but that mistake was corrected when it was brought to the Petitioner's attention.

In addition to requests that certain IATSE stagehands not be referred to the Employer, Pierce has addressed certain conduct that is unacceptable to him. Thus, Pierce has notified the steward and sought the correction of incidents where IATSE stagehands did not secure items that could fall while working at height, were on the premises during a show without permission, and received free merchandise from artists. Pierce has also rebuked the steward for sending IATSE stagehands home early without his approval. In that situation, although the hall had been rented for a production of the New Jersey Ballet and the tour manager advised Castania that he could send people home, Pierce told Castania, "You work for me, you don't have the right to send people home." Pierce is also responsible for the scheduling and discipline of house stagehands.

III. ANALYSIS

A. Independent Contractors

The Employer contends that all IATSE stagehands are referred to them as independent contractors.

Section 2(3) of the Act provides that the term “employee” shall not include “any individual having the status of independent contractor.” 29 U.S.C. § 152(3). In determining whether an individual is an employee or an independent contractor, the Board applies the common law agency test and considers all the incidents of the individual’s relationship with the employing entity. *Argix Direct, Inc.*, 343 NLRB 1017 (2004); *Roadway Package System*, 326 NLRB 842, 850 (1998); *Dial-a-Mattress Operating Corp.*, 326 NLRB 884, 892 (1998); *Slay Transportation Co.*, 331 NLRB 1292, 1293 (2000). The multifactor analysis set forth in Restatement (Second) of Agency, Sec. 220 includes the following factors:

1) the control that the employing entity exercises over the details of the work; 2) whether the individual is engaged in a distinct occupation or work; 3) the kind of occupation, including whether, in the locality in question, the work is usually done under the employer’s direction or by a specialist without supervision; 4) the skill required in the particular occupation; 5) whether the employer or the individual supplies the instrumentalities, tools, and the place of work for the person doing the work; 6) the length of time the individual is employed; 7) the method of payment, whether by the time or by the job; 8) whether the work in question is part of the employer’s regular business; 9) whether the parties believe they are creating an employment relationship; and, 10) whether the principal is in the business.

The determination of whether an individual is an independent contractor is quite fact-sensitive. *NLRB v. United Insurance Co.*, 390 U.S. 254, 258 (1968). The burden is on the party asserting independent contractor status to show that the classifications in

question are independent contractors. *BKN, Inc.*, 333 NLRB 143, 144 (2001). The Employer has failed to satisfy this burden.¹⁵

IATSE stagehands are not skilled workers engaged in a distinct occupation that they perform with their own equipment and without supervision. They are not free to come and go as they please and set their own schedules. They do not assume the cost and derive profit/loss from a business, in their own name, that is different and independent of the Employer's operation. Rather, IATSE stagehands arrive on a day and time that is determined by Pierce; perform significant physical work under the direction of the tour manager, Pierce and other house staff; take breaks and are released only with the approval of Pierce; perform functions that are an essential part of the Employer's normal operations; and receive paychecks with appropriate withholdings and deductions. These are strong indicators of employee (not independent contractor) status.

IATSE stagehands are not required to accept a job that is offered to them. However, they do not deal directly with the Employer regarding their selection for work and do not negotiate the terms. The alleged "independent" contractors do not possess such control over their own labor. Rather, these functions are performed by the Petitioner through a hiring hall process that is exceedingly common among organized employees. IATSE stagehands need not be excluded from the protection of

¹⁵ I find that the Employer's reliance on *Pennsylvania Academy of Fine Arts*, 343 NLRB 846 (2004) in support of its assertion that the stagehands are independent contractors to be misplaced. In *Pennsylvania Academy*, the Board noted that individuals who model for art classes: 1) signed individual contracts, 2) were not subject to discipline, 3) determined which specific classes or professors they will accept, 4) were paid by the class and not on a hourly or a salary basis, 5) supplied their own robes, slippers and equipment to support their posing and 6) retained significant discretion in how they performed their work. None of the aforementioned factors, which support a finding of independent contractor status, are present in the instant case.

the Act and denied a bargaining representative simply because they are offered (but do not have to accept) employment through a third party intermediary.

Based upon the foregoing, I find that the petitioned-for IATSE stagehands are statutory employees and not independent contractors.

B. JOINTLY EMPLOYED EMPLOYEES

The Employer contends in its brief that it is a joint employer with the Petitioner and 642 Services, as alter egos of the IATSE stagehands.¹⁶ The Employer also contends that a multiemployer unit consisting of the production staff (employed solely by the Employer) and IATSE stagehands (jointly employed by the Employer and an entity consisting of the Petitioner and 642 Services) is not permissible without both employers' consent. *Oakwood Care Center*, 343 NLRB 659 (2004).

In *Airport Bus Service*, 273 NLRB 561 (1984), the Board described the law with respect to alter ego or single employer status as follows:

It is well established that in determining whether two or more nominally separate businesses operating simultaneously are sufficiently interrelated so that they may be treated as a single integrated business enterprise, the Board looks to four principal factors: common management, centralized control of labor relations, interrelationships of operations, and common ownership or financial control.

The Board does not vest each factor with equal importance -- emphasizing common control of labor relations above the others while deemphasizing the importance of common ownership. Much more important than common ownership is

¹⁶ The Employer did not take the position at hearing that the Petitioner and 642 Services are "alter egos." But in any event, the term "alter ego" generally refers to the creation of a new entity as the disguised continuance of another business in order to avoid the bargaining obligations of the latter. The instant matter is not such a situation. Rather, the Employer seems to assert that the Petitioner and 642 Services constitute a single integrated enterprise or "single employer" of the IATSE stagehands. The factors that the Board uses to determine alter ego and single employer status are essentially the same.

the absence of arms-length transactions between companies which are alleged to constitute a single entity. In fact, the Board has observed that “[t]he hallmark of a single employer is the absence of an arm's-length relationship among seemingly independent companies. *Bolivar-Tees, Inc.*, 349 NLRB 720 citing *RBE Electronics of S.D.*, 320 NLRB 80 (1995) and *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991).

Here, the record contains no evidence of transactions or the comingling of funds between the Petitioner and 642 Services on less than an arms-length basis.

The Petitioner and 642 Services do not have common control of labor relations as a “single employer” of IATSE stagehands who work at the Employer’s facility. The Petitioner negotiates with the Employer as a labor organization and bargaining representative of IATSE stagehands in order to *maximize* their wages, benefits and other terms and conditions of employment. The Petitioner does not act as an employer attempting to mitigate those costs. 642 Services is not involved in such labor relations at all. Rather, 642 Services performs ministerial payroll functions on the basis of terms which are negotiated by the Employer and the Petitioner. The Petitioner and 642 Services have different officers and 642 Services plays no part in the supervision of employees who are referred out to the Employer through the Petitioner’s hiring hall. Accordingly, the two most important indicia of single employer status – the absence of arms-length transactions and common control of labor relations – are absent here.

The Petitioner and 642 Services share a common location, jointly employ an office administrator, and the Petitioner’s steward prepares an invoice which is provided to the Employer on behalf of 642 Services. In this regard, the business of

642 Services is somewhat integrated with and dependent upon the Petitioner. However, the entities are not integrated as an “employer” of IATSE stagehands. They are related entities which do not, either individually or collectively, have an employment relationship with employees which the Petitioner seeks to represent for purposes of collective bargaining.

Based upon the foregoing, I find that the Petitioner and 642 Services are not alter egos or single employers.

The record is equally clear that the Employer and 642 Services are not joint employers of IATSE stagehands. Joint employers must codetermine matters governing the essential terms and conditions of employment. See *Riverside Nursing Home*, 317 NLRB 881 (1995); *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982). In that regard, both “employers must meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.” *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002) citing *TLI, Inc.*, 271 NLRB 798 (1984). As indicated above, 642 Services plays no role in such matters. Here, as in *La Gloria Oil & Gas Co.*, 642 Services “simply provides a service to Respondent by handling administrative functions such as payroll” and is not a joint employer of IATSE stagehands. *Id.*

C. COMMUNITY OF INTEREST – HOUSE AND IATSE STAGEHANDS

The Employer contends that house and IATSE stagehands do not share a community of interest and cannot be included in the same bargaining unit.

It is well established that the Act requires only that a petitioner seek an appropriate unit and not the most appropriate or comprehensive unit. See *Morand*

Brothers Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1950); *Capital Bakers*, 168 NLRB 904 (1967). In deciding an appropriate unit, the Board first considers the union's petition and whether the unit sought is appropriate. *Overnite Transportation Company*, 322 NLRB 723 (1966). A petitioner's desire concerning the composition of the unit that it seeks to represent constitutes a relevant consideration. *Marks Oxygen Company of Alabama*, 147 NLRB 228 (1964).

In arriving at an appropriate unit determination, the Board weighs "various community of interest factors" including:

"[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining." *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

Here, the evidence reveals a significant degree of contact, common management and functional integration between house and IATSE stagehands. All stagehands work in the same facility and they collaborate on certain jobs. Although house stagehands may work longer hours than IATSE stagehands, the hours of all stagehands largely overlap and afford a great deal of contact. House and IATSE stagehands are also released for breaks at the same time. In sum, house and IATSE stagehands work together in a coordinated enterprise to present a single production.

The skills and responsibilities of house and IATSE stagehands are similar. Like IATSE stagehands, the production assistants perform a variety of tasks as directed and necessary. The lighting designer and audio technician perform more

technical functions than the other stagehands, but it is more advanced work of a similar nature on integrated jobs. Mekawy and Clifford do not perform the type of distinct and independent work that would warrant their potential separation in a separate craft unit.

Pierce is the person primarily responsible for the discipline and discharge of house and IATSE stagehands. Although Pierce often communicates with IATSE stagehands through the steward, he has clearly identified himself as the “supervisor” who may dictate their conduct and continued employment.

Likewise, Larena and Pierce are responsible for setting the wages, hours and other terms and conditions of employment of all stagehands. With regard to IATSE stagehands, unlike house stagehands, the Employer has negotiated these terms with the Petitioner. Accordingly, the negotiated terms of IATSE stagehands are somewhat different than house stagehands. However, those differences are not so dramatic as to undermine their community of interest.

In conclusion, the evidence establishes that house and IATSE stagehands share a community of interest. In so finding, I particularly rely on the fact that they have significant working contact under coordinated management for the presentation of an integrated show. Accordingly, I find that the petitioned-for unit is appropriate and shall direct an election therein.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board’s Rules and Regulations.

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees who regularly average four or more hours per week for the last quarter prior to the eligibility date are eligible to vote.¹⁷ Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **LOCAL 632, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOTION PICTURE**

¹⁷ The Board's standard formula for determining the voting eligibility of part-time and on-call employees is the *Davison-Paxon* formula. Under *Davison-Paxon*, "an employee is deemed to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours per week for the last quarter prior to the eligibility date." *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970). It is well established that this formula shall apply to a performing arts center which operates a regular production schedule. See *Wadsworth Theater Management*, 349 NLRB 122 (2007).

TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, AFL-CIO, CLC.

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **December 29, 2010**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **January 5,**

2011. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov, but may not be filed by facsimile.¹⁸

Signed at Newark, New Jersey this 22nd day of December, 2010.

/s/ J. Michael Lightner

J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

¹⁸ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. The click on the E-filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.